

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

| | | |
|---------------------------------|---|----------------------|
| BRIDGEPORT MUSIC, INC., et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | NO. 3:01-0763 |
| |) | Judge Campbell/Brown |
| WB MUSIC CORP., et al, |) | |
| |) | |
| Defendants. |) | |

TO: The Honorable Todd J. Campbell

REPORT AND RECOMMENDATION

I. INTRODUCTION

Presently pending before the Magistrate Judge for Report and Recommendation is the Defendant's, Universal Studios, Inc., Motion for Attorneys' Fees. (Docket Entry 156).

For the reasons stated below, the Magistrate Judge **recommends** that the Defendant's Motion for Attorneys' Fees against the Plaintiff, Bridgeport Music, Inc., et al., be **denied without prejudice** to be re-filed, if necessary, pending the completion of the appeals process.

II. BACKGROUND

As all concerned are well aware, this case grew out of the initial litigation filed by Plaintiff, Bridgeport and others, in May 2001, under Case No. 3:01-0412. This case was opened under its present number on August 1, 2001, upon severance of the original case into some 477 separate cases.

On November 14, 2005, after extensive discovery by all parties, Defendant, Universal Studios, Inc., filed a Motion for Summary Judgment (Docket Entry No. 108). On April 6, 2006, this Motion for Summary Judgment was granted (Docket Entry No. 145), approving the

Magistrate Judge's Report and Recommendation (Docket Entry No. 137). On April 17, 2006, Plaintiff, Bridgeport Music, Inc., et al, filed a notice of appeal of this ruling. (Docket Entry No. 146). This appeal is currently pending before the United States Court of Appeals for the Sixth Circuit.

On June 21, 2006, Defendant, Universal Studios, Inc., filed a Motion for Attorneys' Fees, which is the subject of this Report and Recommendation. (Docket Entry No. 156).

III. LEGAL DISCUSSION

Given the pending appeal, the Magistrate Judge believes the Defendant's Motion for Attorneys' Fees was filed prematurely. While both Plaintiff and Defendant have submitted detailed memorandums on this matter, the Magistrate Judge believes that, in the interest of judicial economy, the Court should not address this issue until the completion of the appeals process. To do otherwise would be a waste of judicial time given that the outcome of the appeal will directly impact which party, if any, is entitled to an award of attorney fees and in what amount.

IV. RECOMMENDATION

For the reasons stated above, the Magistrate Judge **recommends** that the Defendant's Motion for Attorneys' Fees against the Plaintiff, Bridgeport Music, Inc., et al., (Docket Entry No. 156) be **denied without prejudice** to be re-filed, if necessary, pending the outcome of the appeal process.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said

objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. An, 474 U.S. 140, 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), reh'g denied, 474 U.S. 1111 (1986).

ENTERED this 6th day of September, 2006.

/S/ Joe B. Brown
JOE B. BROWN
UNITED STATES MAGISTRATE JUDGE